REMARKS

Claims 1-12, 15-27, and 30-41 were pending. In an Office Action dated August 1, 2008, claim 40 was objected to as being dependent upon a rejected base claim but allowable if rewritten in independent form and claims 1-12, 15-27, 30-39, and 41 were rejected. Applicants have amended claims 1 and 17 in this amendment. Claims 1-12, 15-27, and 30-41 are pending upon entry of this amendment. Applicants thank the Examiner for examination of the claims pending in this application and address the Examiner's comments below.

Interview Summary

Applicants conducted a telephone interview with Examiners Scott Sciacca and Benjamin Bruckart on October 30, 2008, in order to discuss this amendment. Applicants thank the Examiners for their time and remarks. During the telephone interview, Applicants' representatives and the Examiners discussed the distinctions between the claimed invention and the Hasink reference. No specific agreement was reached during the interview.

Response to Rejection Under 35 USC § 102(e)

In the 1st paragraph of the Office Action, the Examiner rejects claims 1-15, 17-30, 32-39 and 41 under 35 USC § 102(e) as allegedly being anticipated by Hasink et al. (U.S. Patent Publication No. 2005/0149932). Applicants respectfully traverse the rejection as applied to the amended claims.

Amended claim 1 recites:

> receiving, by an application executed by an operating system, a plurality of operating
>   parameters having values describing a plurality of resources of a client device;
> determining a value representing a performance measure of the client device based at
>   least in part on **a combination of the plurality of operating parameter
>   values describing the plurality of resources of the client device;**

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assigning the value representing the performance measure to a usage variable;
and
correlating by the application a resource usage level of the application with the usage
variable, the correlating comprising the application modifying its own
execution based at least in part on a change to the value assigned to the usage
variable.

(Emphasis Added). Thus, the claimed invention determines a value representing a performance measure of the client device based at least in part on a combination of a plurality of operating parameter values describing a plurality of resources of the client device.

Hasink does not determine a value based at least in part on a combination of operating parameters values describing a plurality of resources of a client device or assign the value to a usage variable. Hasink describes a background process that waits a given amount of time, checks a performance counter (e.g., "current disk queue length"), and determines whether to use a resource based on the value of the counter. *See* Hasink at [0031], [0037]. For example, if the counter value is zero or less than a specified threshold, the background process uses the resource; if the counter value is non-zero or greater than a specified threshold, the background process waits a designated amount of time before checking again. *See id.* at [0031].

Hasink does not determine "a value representing a performance measure of the client device based at least in part on a combination of the plurality of operating parameter values describing the plurality of resources of the client device" or assign "the value representing the performance measure to a usage variable" as claimed. The counters of Hasink's Table I are alleged by the Examiner to disclose a plurality of operating parameters which describe a plurality of resources. However, Hasink does not disclose determining a value based on a combination of the counters described by the table nor does Hasink assign such a value to a usage variable. Instead, Hasink simply uses the individual counters in the table as they are. Hence, Applicants respectfully submit that independent claim 1 is not anticipated by the cited reference.

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Independent claim 17 is not anticipated for at least the same reasons. Claims 2-12, 15, 18-27, 30, 32-39, and 41 variously depend from claims 1 and 17 and are not anticipated for at least the same reasons.

Accordingly, Applicants respectfully request that the § 102(e) rejection of claims 1-15, 17-30, 32-39 and 41 be withdrawn.

Response to Rejection Under 35 USC § 103

The Examiner rejected claims 16 and 31 under 35 USC § 103(a) as allegedly being unpatentable in view of Hasink in view of Anderson, II et al. (U.S. Patent No. 5,909,544). This rejection is respectfully traversed.

Anderson discloses a method for configuring hardware resources such as computers and devices to operate autonomously over a network. Claims 16 and 31 depend on independent claims 1 and 17 respectively and inherit all their limitations including "determining a value representing a performance measure of the client device based at least in part on a combination of the plurality of operating parameter values describing the plurality of resources of the client device" and "assigning the value representing the performance measure to a usage variable." Since Anderson does not teach or disclose the above limitations, Anderson does not remedy the deficiencies of Hasink described above. Therefore, the cited references considered alone or in the combination proposed by the Examiner do not teach, suggest, or disclose the claimed invention. Accordingly, claims 16 and 31 are patentable over the combination of Hasink and Anderson for at least the reasons described above.

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Conclusion

For the above reasons, Applicants respectfully submit that the pending claims, as amended, are not taught by the art of record, and request that the application be passed to issue. The Examiner is invited to contact the undersigned by telephone to advance the prosecution of this application.

Respectfully Submitted,
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